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Introduction to Farm Labor Law

JOSEPH R. GRODIN*

The California Agricultural Labor Relations Act of 1975 represents a bold experiment with ramifications radiating in a variety of directions. How that experiment works, and equally significantly how it is viewed as working by policy makers locally and nationally, is likely to have long-range impact upon agriculture as an industry, upon the future of agricultural labor relations in California and nationally, and upon the future of labor relations law in other non-agricultural, industries as well.

The experimental nature of the ALRA derives not only from the fact that it is the first attempt by government to regulate agricultural labor relations in a comprehensive, relatively even-handed way; the statute is experimental also in that it brings to bear concepts and procedures which are not merely replicas of traditional labor policy, but which constitute innovative attempts to meet the problems peculiar to agriculture. Its representation procedures, for example, are geared to the fact that for most of California agriculture employment is primarily seasonal and often casual and migratory in nature. The concept of employee representation through organizations of their own choosing, a concept central to American labor policy generally, presents a difficult challenge in this context. The Act confronts that challenge in a variety of ways. It stipulates that elections will be conducted only at times when the work complement is at least half of seasonal peak employment. It provides that elections will be conducted within seven days from the filing of a representation petition, and facilitates that process by minimizing the potential for dispute over unit determinations and voter eligibility and by deferring such issues, where dispute exists, to hearing and resolution

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after the election is held. Instead of insisting, as does the National Labor Relations Board, that a worker in order to be eligible to vote must be employed both at the time of some cut-off date prior to the Notice and Direction of Election and at the time of the election itself, it accommodates to the casual nature of much agricultural employment by enfranchising all those workers on the payroll at the time the petition for election is filed. Instead of adopting common law concepts of "independent contractor" status to define the employer-employee relationship, it rather boldly deletes labor contractors from the definition of "employer."

The Agricultural Labor Relations Board, in implementing the Act, has also been guided by its perception of the unique or unusual characteristics of agricultural labor. While the Act provides, for example, that the Board is to follow "applicable" precedents under the National Labor Relations Act the Board, with judicial approval, has deemed certain NLRA precedents to be inapplicable because of differences in industrial context. The Board's rule providing for ballot choices to be represented by symbols in addition to words, a procedure not followed by the NLRB, takes into account the relatively low level of literacy which prevails among some agricultural workers in some areas. Better known, and more controversial, is the ALRB's "access rule," which permits union organizers access at limited times and places to the locations at which agricultural workers are congregated on a grower's property. The NLRB allows similar access where it is shown that effective alternatives for communication between workers and union organizers do not exist. The NLRB applies its rule, however, on a case-by-case basis. The ALRB, based on information supplied in rule-making procedures, concluded that for a variety of reasons the existence of effective alternative modes of communication represented the exceptional situation in agriculture rather than the norm; and because it considered it of vital importance to establish criteria of general application which all affected parties could read and understand in advance of organizational efforts, it elected to proceed by rule rather than on the basis of case-by-case determination after the event. Its determination in that regard was upheld by the California Supreme Court.

In terms of California the ALRA must on the basis of at least readily observable data be deemed a success. The bitter and occasionally violent strife which marked the pre-statutory period seems to have dissipated; the highly disruptive jurisdictional warfare between the United Farm Workers and the Teamsters has been terminated by agreement resulting in at least short-run advantages to all concerned; the UFW has called an end to its consumer boycotts which had their origin in pre-statutory disputes; the ALRB has conducted and certified the results in hundreds of elections; and collective bargaining is taking place on an

apparently constructive basis. Thorough evaluation, however, will require more intensive investigation than has yet occurred. What is the practical effect of statutory and agency election rules upon the relative voting strength of regular, seasonal, and migratory workers? How stable are the bargaining relationships which develop out of expression of choice by an often transient electorate? What are the consequences of the access rule upon the operation of farms and upon union organizing? What has been the effect of excluding labor contractors from the definition of "employers" upon the labor contractor system? What patterns of bargaining have developed, and what is their impact upon California agriculture and upon conditions of farm labor? These and other similar questions deserve exploration if the ALRA and its consequences are to be fully understood and evaluated.

The relevance of the ALRA experiment to other states and to the nation poses additional questions. To what extent are the organization of agriculture and the characteristics of farm labor different in other states from the situation in California, and to what extent if any do these differences require a different legal approach? If national legislation is desirable because of the interstate nature of modern agricultural enterprise and/or the necessity for national leadership in an area in which state legislatures have been reluctant to move, what form should that legislation take? Should the NLRA simply be amended to eliminate the exclusion of agricultural workers, or is that Act and its administration in their present form and structure too inflexible to meet the challenges be met by relatively minor amendments to the NLRA itself, or is separate legislation required? In any event, should national legislation, if it is to occur, preempt the field as it does in the case of labor relations generally or should it allow room for the operation of individual state experimentation as in California? These questions require careful consideration.

Finally, there are the implications of the ALRA for labor relations law beyond agriculture. Several of its provisions, and some of the regulations and practices of the ALRB, treat areas which have been the subject of criticism concerning the NLRA: the long delays in conducting and certifying the results of elections; the inadequacy of existing remedies to deter the commission of unfair labor practices and to properly compensate for their effects; the NLRB's failure to utilize its substantive rule-making authority, relegating issues to case-by-case determination with all the uncertainty and delay that may entail; and the NLRB's "laboratory conditions" analysis of pre-election conduct, an analysis which, it has been argued, is based on erroneous assumptions concerning voting behavior and therefore results in a distortion of priorities. In each of these areas the ALRA by statute or the ALRB by rule or deci-

sion has broken new ground, and in directions which could serve as models for national developments. Indeed, some of the provisions of the Labor Reform Act presently pending in Congress constitute variations of the ALRA model. Some questions posed at the national level, such as the administrative feasibility of conducting elections within a relatively short period, are rather readily answered by ALRA experience to date. Others invite further study and analysis.

This symposium, while necessarily limited its scope, proceeds along much needed lines. Robert Christopher, in his article on "The NLRA Agricultural Labor Exemption: New Perspectives on Two Old Questions," examines the fuzzy and somewhat illogical perimeters of the agricultural labor exemption to the NLRA and then proceeds to attack the exemption head-on, arguing forcefully and prevocatively for its repeal. In the process, he considers and analyzes the various arguments which have in the past been brought to bear in favor of the exemption, some of which pose the issues I have already referred to.

In "Employer Successorship in California Agriculture," Nora Kavner and Marcia Todhunter deal with one of the many complexities involved in transposing national labor law to the agricultural scene. In determining whether the purchaser of an agricultural enterprise has a legal obligation to continue to recognize and bargain with the union which acted as collective bargaining representative for employees of the seller, or to continue to honor the agreement entered into between the seller and that union, the authors argue that rigid application of NLRA precedent would produce results contrary to the policies of the ALRA. Instead, the authors contend the ALRB should consider itself free to develop its own rules for dealing with this situation, and they offer a creative solution to that end.

Finally, in "Bargaining Unit Determination and the Agricultural Labor Relations Act," Brian McDonald addresses himself to those situations in which the ALRB has discretion in determining the scope of a bargaining unit: where employees are working in two or more non-contiguous areas, where farming operations are conducted by someone other than the owner of the land on which they are conducted, and where question arises whether two or more employers should be considered a single "employer" for purposes of the Act. With respect to each of these areas, he undertakes the difficult task of criticizing and synthesizing ALRB decisions within a framework of precedent under the NLRA.

All three articles bring helpful insights to bear, including some which I wish I had had the advantage of when I was a member of the ALRB. Their work represents a valuable contribution to understanding and evaluation of California's experiment.